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205 Pennsylvania Avenue, S.E.
Washington, D.C. 20003

May 20, 2020

MEMO FOR: Washington Public Disclosure Commission

FROM: David Mason, Senior VP, Compliance Services, Aristotle International

RE: Draft Emergency Rules implementing Substitute Senate Bill 6152

Aristotle International, Inc. provides software, filing, and compliance services for clients filing reports with the PDC. While these comments are informed by our experience with client filing and compliance needs, these comments are submitted by Aristotle and not on behalf of any Aristotle client. These comments are also informed by my own experience as Commissioner of the Federal Election Commission interpreting and enforcing the federal prohibition on foreign national contributions

1. Suggested certification format

The legislation and Section (1)(a) of the draft rules prohibit contributions that are financed in whole or in part by foreign nationals. The certification item (d) in contrast says that "the ***entity*** making the contribution is not financed in any part by a foreign national" (emphasis added).

The switch from a statutory requirement that a ***contribution*** may not be financed in whole or part by foreign nationals to a certification that the ***entity making a contribution*** is not financed in whole or in part by a foreign national could have the effect of prohibiting contributions that the text of the legislation and the substantive provisions of the draft rules allow.

While the draft rules do not provide standards for when an entity is financed in whole or in part by a foreign national, the draft regulations' definition of financing of a contribution by a foreign national and ordinary understanding would suggest that a company that is owned in whole or in part by a foreign national is financed by a foreign national. Due to changes in international trade and investment many American companies are owned in whole, in major part, or in minor part by foreign nationals. Indeed virtually any publicly traded American company will have some or many foreign owners. Those investments in American companies are not made for the purpose of political activity, but for the purpose of returning profits to the investors.

SB 6152 as introduced prohibited contributions by corporations more than 50% owned by foreign nationals and required certifications regarding the entity's ownership. The legislature explicitly rejected that approach and instead enacted a restriction on focused on the financing of contributions rather than on the financing or ownership of entities that make contributions.

Thus, certification (d) appears to adopt an approach at variance with the legislation and that was rejected by the legislature.

I urge the Commission to revise certification (d) to require "A statement that the contribution is not financed in any part by a foreign national." Entities seeking guidance on the requirements underlying this certification could consult the substantive section of the draft rules.

2. Receipt of certifications prior to deposit.

The requirement that committees receiving contributions from business entities obtain statements in writing from those entities prior to deposit of contributions (within the five days mandated elsewhere in the law) will fall hardest on small campaigns and small contributors. The requirement will do nothing to combat the influence of foreign actors on US elections, which is the objective of the law.

Large entities wishing to make multi-thousand dollar contributions to statewide candidates, ten thousand dollar contributions to PACs, or million dollar Independent Expenditures will have access to counsel who will provide required disclosures with those large contributions. In contrast, a small business owner or professional practicing in an LLC or partnership is likely to be unversed in the required certification format.

Most local campaigns and even many legislative candidates are supported by volunteer Treasurers and lack full time staff. The Treasurer of a small committee receiving a contribution check from a small donor in the mail or after a fundraising event may have no contact information other than a mailing address. Even if the Treasurer sends a letter the day the check is received, the contributor may not receive the letter for a few days. Even if the contributor responds immediately with the requested certification, the return mail may take days to reach the Treasurer. Thus, many small contributions written on the business or professional practice accounts of American contributors will need to be

returned in service of reducing foreign influence because ordinary processing and mailing times do not fit within the five day deposit window. This burden will be felt most acutely by grassroots campaigns funded by small dollar contributions, including those from local small business and professionals.

Many campaigns and committees use caging firms or other processes in which checks are routinely deposited the day of receipt. For reasons similar to those underling the five day deposit requirement, same day deposits are a sound business and compliance practice. The pre-deposit certification requirement would require committees to alter their same day deposit practices to segregate and store checks for up to five days. This would increase the risk of checks being lost, stolen, or overlooked.

I urge the Commission to take a more flexible approach to obtaining required certifications by allowing committees to deposit checks and refund contributions if they are subsequently unable to obtain the required certifications. Giving committees until the date a report including an entity contribution is filed to obtain the required certifications would meet the statutory requirement that a report include a statement that those certifications have been obtained.